

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO.: 502015CA002369AN

EDMUNDO PEREZ, as Personal
Representative of the Estate of ASHLEY
PEREZ, Deceased, on behalf of the Estate of
ASHLEY PEREZ and the lawful survivors of
the Decedent, To Wit: AMALIA PEREZ, as
surviving minor daughter, and DYLAN
PEREZ, as surviving minor son,

Plaintiff,

vs.

WELLINGTON REGIONAL MEDICAL
CENTER, INC., individually and on behalf of
its agents, apparent agents, servants and
employees; JAMES JUSTIN GOAD, M.D.;
PALM BEACH GENERAL SURGERY d/b/a
THE CENTER FOR ADVANCED
SURGICAL CARE; ST. MARY'S MEDICAL
CENTER, INC., d/b/a ST. MARY'S
MEDICAL CENTER; WILLIAM JEFFREY
DAVIS, D.O.; PALM BEACH TRAUMA
ASSOCIATES, individually and on behalf of
its partners, agents, apparent agents, servants
and employees; ROBERT BORREGO, M.D.,
P.A., independently and as general partner of
PALM BEACH TRAUMA ASSOCIATES;
AHMED EL-HADDAD, M.D., P.A.;
DIMITER B. HRISTOV, M.D., P.A.,
independently and as general partner of PALM
BEACH TRAUMA ASSOCIATES;
RAYMOND HENDERSON, SR., M.D.; and
RAYMOND HENDERSON, SR., M.D., P.A.,

Defendant.

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**AMENDED AND SUPPLEMENTAL ORDER GRANTING
PLAINTIFF'S MOTION TO AMEND
AMENDED COMPLAINT TO ADD PUNITIVE DAMAGES
AGAINST WILLIAM JEFFREY DAVIS, D.O. AND ST. MARY'S
MEDICAL CENTER, INC. D/B/A ST. MARY'S MEDICAL CENTER**

THIS MATTER came before the Court on October 15, 2018 on Defendants' Motion for Reconsideration of this Court's Order Granting Plaintiff's Motion to Amend Amended Complaint to Add Punitive Damages Against William Jeffrey Davis, D.O. and St. Mary's Medical Center, Inc. d/b/a St. Mary's Medical Center (the "Motion"). After hearing the matter, reviewing and considering the Plaintiff's proffer, evidence presented by the Defendants in response to the Plaintiff's proffer, the parties written submissions, arguments of counsel and being otherwise fully advised in the premises, **the Court finds and concludes as follows:**

Procedural Background:

1. This is a medical malpractice action involving the alleged wrongful death of Plaintiff, Ashley Perez.
2. On August 27, 2018, this Court conducted a hearing on Plaintiff's Motion to Amend Amended Complaint to Add Punitive Damages Against William Jeffrey Davis, D.O. and St. Mary's Medical Center, Inc. d/b/a St. Mary's Medical Center ("Motion") (D.E. 793).
3. After hearing on the matter, reviewing and considering Plaintiff's proffer, and being otherwise fully advised in the premises, the Court entered an Order Granting Plaintiff's Motion on August 30, 2017.
4. On September 18, 2018, Defendants filed a Motion for Reconsideration of this Court's Order Granting Plaintiff's Motion based upon Florida Hospital Medicine Services, LLC v. Newsholme, 2018 WL 4211757 (Fla. 4th DCA September 5, 2018). Defendants' Motion for Reconsideration argued that this Court had applied an incorrect legal standard in considering

Plaintiff's proffer because the Court stated in its Order Granting Plaintiff's Motion that the standard to apply "should be similar to the standard that is applied to determine whether a complaint states a cause of action. The proffer, therefore, is reviewed in the light most favorable to the Plaintiff and accepted as true." (citations omitted) Defendants also argued that the Plaintiff's proffer was insufficient.

5. On September 28, 2018, this Court entered an Order granting the Defendants' Request for Reconsideration and scheduling a hearing on the matter for October 15, 2018. During the foregoing hearing, the parties argued the points raised in the Motion for Reconsideration, including the appropriate legal standard to be applied and whether the evidence proffered by the Plaintiff was sufficient to establish a reasonable basis to plead a claim for punitive damages.

Applicable Law:

6. In pertinent part, §768.72(1), Fla. Stat. provides:

In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure.

7. Fla. R. Civ. P. 1.190(f) states: "A motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages."

8. Further, §768.72, Fla. Stat. provides:

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high

probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) “Gross negligence” means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant . .

..

9. Importantly, concerning the matter *sub judice*, at this stage Plaintiff does not have to prove the existence of gross negligence by clear and convincing evidence. Rather, at this time, Plaintiff need only demonstrate a reasonable basis for the recovery of punitive damages in the form of a proffer of evidence or presentation of record evidence. See Strasser v. Yalamanchi, 677 So. 2d 22, 23 (Fla. 4th DCA 1996).

10. Neither the statute nor the rule defines “reasonable basis” nor do they specify the standard by which a trial court is to make that determination. In Newsholme, the Fourth District held that a trial court may not simply accept allegations in a proffer or motion for punitive damages as true but must consider whether the proffered evidence establishes a reasonable basis for the recovery of punitive damages. Because the trial Court in Newsholme failed to do so, the Newsholme Court held that the trial court had failed to comply with the procedural requirements

of 768.72. Id. at *2.¹ The Newsholme Court further noted that the trial judge must act as a gatekeeper and must preclude claims for punitive damages where there is no reasonable evidentiary basis for recovery. Id. at *2 -*3.

11. Newsholme did not discuss the standard to be applied by the trial court in determining whether a party has established a reasonable basis for the recovery of punitive damages, other than noting that the trial Court may not simply accept allegations or proffered evidence as true, without doing more to determine the existence of a reasonable basis. Courts in Florida have fleetingly mentioned the standard in a variety of ways that provide guidance to the Court but no definitive answer.

12. Recently, in Bistline v. Rogers, 215 So. 3d 607, 610 (Fla. 4th DCA 2017), the Fourth District appears to suggest in *dicta* that a trial court should use a standard which is analogous to that which is used in deciding whether to grant summary judgment when it notes:

It appears the trial court misapplied our decision in *Holmes* and accepted Rogers's allegations as true believing that the inquiry "is akin to determining whether the pleader has stated a cause of action." *Holmes* was a direct appeal after trial of an order denying a motion to amend the complaint to add a claim for punitive damages. There, we addressed what standard of review should be applied to a trial court's pretrial decision to deny the amendment. we made a comparison in which we determined that the "reasonable showing" under section 768.72 is "similar to determining whether a complaint states a cause of action or the record supports a summary judgment, both of which are reviewed de novo." *Id.* Unfortunately, the trial court focused on the language "whether the complaint states a cause of action,"

¹ Leinberger v. Magee, 226 So. 3d 899, 900–01 (Fla. 4th DCA 2017), summarizes these procedural requirements as follows: First, the movant must attach the proposed amended pleading to the motion seeking leave to amend, in compliance with Florida Rule of Civil Procedure 1.190(a). Second, the "proffer" or other evidence of record to support the punitive damages claim must be served at least 20 days prior to the hearing on the motion for leave to amend. Third, the trial court must make an affirmative finding that the plaintiff made a "'reasonable showing by evidence,' which would provide a 'reasonable evidentiary basis for recovering such damages' if the motion to amend is granted." In this case, the Plaintiff attached a proposed Second Amended Complaint to his Proffer and served it 20 days prior to the hearing on Plaintiff's Motion to Amend. The Defendants' requested reconsideration on the basis that this Court failed to apply the correct standard in concluding the Plaintiff had established a reasonable basis for the recovery of punitive damages.

disregarding the other part of the analogy, whether “the record supports a summary judgment.” (emphasis added).²

13. Shortly before Bistline, in Tilton v. Wrobel, 198 So. 3d 909, 910 (Fla. 4th DCA 2016), the Fourth District suggested in *dicta* that the moving party must make a prima facie showing by noting: “If the trial court did evaluate the sufficiency of the proffer, then it appears the trial court erred in determining that the respondent proffered sufficient evidence to make a prima facie showing of intentional or grossly negligent conduct.”³

14. The First District has explained that in evaluating the sufficiency of evidence proffered, the evidence is viewed in a light favorable to the moving party. See Wayne Frier Home Ctr. of Pensacola, Inc. v. Cadlerock Joint Venture, L.P., 16 So. 3d 1006, 1009 (Fla. 1st DCA 2009)(citing Estate of Williams ex rel. Williams v. Tandem Health Care of Florida, 899 So.2d 369, 376 (Fla. 1st DCA 2005) (“When a claim for punitive damages is made, the trial court must decide, after the submission of evidence, whether there is a legal basis for the recovery of punitive damages shown by any interpretation of the evidence favorable to the plaintiff.”)).

15. In Varnedore v. Copeland, 210 So. 3d 741, 743 (Fla. 5th DCA 2017), the Fifth District recently noted as follows:

Counsel, however, is free to suggest inferences that may be drawn from the timely filed evidence and proffers. After all, the decision of whether to grant the motion to add punitive damages will be based, at least in part, upon the trial court's determination of whether a reasonable jury could infer from the evidence and proffer that a defendant's conduct amounted to reckless or careless indifference to the plaintiff's life or safety. (emphasis added)

² For purposes of a summary judgment motion, if the evidence raises any issue of material fact, if it is conflicting, if it will permit different reasonable inferences, it should be submitted to the jury as a question of fact. Moore v. Morris, 475 So. 2d 666 (Fla. 1985). Further, the trial court must “draw every reasonable inference in favor of the non-moving party.” (i.e. the party asserting the claim or defense) Jewett v. Leisinger, 655 So. 2d 1210 (Fla. 4th DCA 1995) (citing Moore v. Morris, 475 So. 2d 666 (Fla. 1985)).

³ A “prima facie” case means and means no more than, evidence sufficient to justify, but not to compel, an inference of liability, if the jury so finds. See Crowe v. Overland Hauling, Inc., 245 So. 2d 654, 657 (Fla. 4th DCA 1971), citing Wigmore on Evidence, 3d Edition, § 2494.

16. The Court is aware of no authorities suggesting the proffered evidence must be undisputed, nor are there any authorities suggesting that the court should weigh the evidence as a fact finder would. Indeed, from the Court's review of §768.72 and Fla.R.Civ.P. 1.190, and the case law regarding the proper procedure to be followed, the Court is unaware of any authority authorizing or permitting a "counter-proffer" by defendants or requiring the Court to consider same in its determination of whether Plaintiff has proffered sufficient evidence. Rather, the aforementioned authorities suggest that the Court must determine whether the Plaintiff, through the evidence and proffer presented, has put forth enough evidence such that a jury could infer from the evidence and proffer that a defendant's conduct was intentional or grossly negligent, as those terms are defined in the statute.⁴ Finally, just as noted by the 4th DCA in Bistline that the standard is not the same as a motion to dismiss where the Court must determine whether a complaint states a cause of action, the Court also concludes that, although having similarities, it is equally not the same as a motion for summary judgment where the parties submit competing affidavits and the Court is allowed to rule as a matter of law only if there are no issues of material fact.

The Court's Ruling:

17. The Court's August 30, 2017 Order Granting Plaintiff's Motion to Amend Amended Complaint to Add Punitive Damages Against William Jeffrey Davis, D.O. and St. Mary's Medical Center, Inc. d/b/a St. Mary's Medical Center contains language which may be interpreted to suggest that this Court accepted the Plaintiff's proffer and allegations as true and that such acceptance was both determinative and dispositive as to the Court's ruling without the necessity of the Court determining whether Plaintiff's proffer sufficiently demonstrates a reasonable basis for punitive damages. Because such an interpretation of the Court's order could lead to the conclusion that the

⁴ The instant case involves allegations of gross negligence.

Court followed an approach that would be in contravention of the holding announced by the Fourth District Court of Appeal in Newsholme, the Court's August 30, 2017 Order Granting Plaintiff's Motion to Amend Amended Complaint to Add Punitive Damages is vacated for purposes of providing herein further clarification and supplementation as to the procedure and standard employed by the Court in determining Plaintiff's motion.

18. However, after considering the evidence in the record and proffered by the Plaintiff, as well as the parties' written submissions and arguments of counsel, the Court still concludes that the Plaintiff has made a reasonable showing by evidence in the record and proffered by the Plaintiff, which would provide a reasonable basis for the recovery of punitive damages and, therefore, grants Plaintiff's Motion to Amend. In reaching this conclusion, the Court has not determined or accepted whether Plaintiff's allegations are true without more, but rather it has simply determined whether Plaintiff's proffer is sufficient to provide a reasonable basis for the recovery of punitive damages, giving Plaintiff the benefits of all favorable inferences. The Court has also considered the Defendants arguments, including their citation to various evidence in the record as to the sufficiency of Plaintiff's proffer, but has not considered it appropriate to elevate the Court's role in this matter to the same as in a summary judgment proceeding in determining whether factual issues exist.

19. First, the Court concludes imposing a summary judgment standard would run counter to §768.72(1), Fla. Stat., which has no such provision. Second, in considering defendant's "counter-proffer," the Plaintiff's motion would inescapably devolve the Court into a more significant and complex "evidentiary" hearing where the Court is drawn into the mire of deciding disputed factual issues that remain solely within the province of the jury. Thus, while the process is similar to a motion to dismiss, it is not the same, and the differences are significant. In a motion

to dismiss, the Court is required to accept the allegations as true in determining whether a claim has been stated, and if so, that is the end of the inquiry. Notably, the Court in most instances is restricted to a review of the four corners of the Complaint, which means that a defendant moving to dismiss is not allowed to submit counter-evidence in opposition unless, of course, such evidence comes from and is attached to the complaint.

20. With respect to the punitive damages determination, the matter has usually already proceeded past a determination of the sufficiency of the allegations for purposes of determining whether a claim has been stated. At the stage where punitive damages are considered, the Plaintiff is no longer permitted to rest on mere allegations alone, but must come forth with evidence demonstrating and tending to prove or establish such claims, which makes it akin somewhat to a motion for summary judgment. But again, it is only similar in the sense that evidence as opposed to mere allegations must be considered by the Court and, unlike a motion to dismiss, the Court is not restricted to the four corners of the complaint. However, there is a significant difference in the context of determining punitive damages in that, unlike a summary judgment motion, neither the punitive damages statute nor the rules of procedure contemplate this phase of the Court's inquiry as requiring a contested evidentiary hearing allowing for the submission of contested proffers, or putting the Court in the position of making contested factual determinations. The Court concludes that, for the most part, it is only to consider evidence in the record or proffered by Plaintiff,⁵ and

⁵ While it is unclear from the governing law the precise consideration, if any, the Court is to give to a defendant's counter-proffer, the Court notes that there may be examples of where plaintiff submits an incomplete deposition or document that would entitle the defendant to submit the remainder of the deposition or the rest of the document under the rule of completeness so that the Court is in a position to determine the full import of a person's deposition testimony or the meaning of a document. In this instance, the Court concludes that a consideration of such counter-proffer would be appropriate. However, the Court does not conclude that the defendants would be at liberty to submit as a counter-proffer competing expert affidavits or other witness deposition transcripts that would necessitate the need to resolve factual disputes, as that would require the Court improperly to make factual determinations and resolve evidence and factual disputes falling within the responsibility of the jury, as well as eliminate the benefit of all favorable inferences to which the plaintiff is entitled in regard to his or her evidentiary proffer at this stage. The Court has considered and evaluated Defendants' proffer in the foregoing light.

in doing so, it must make the determination of whether based on such “evidence in the record or proffered by claimant,” giving Plaintiff the benefit of all favorable inferences at this stage, Plaintiff has demonstrated a reasonable basis for recover of punitive damages. After conducting the Court’s evaluation in the foregoing manner, the Court finds as set forth further below.

21. There is evidence proffered in the record from which a jury could conclude that Dr. Davis acted recklessly and with gross negligence as defined in § 768.72(2)(b) when he agreed to accept Ashley Perez in transfer for a consult with trauma services and then failed to ensure that she received an appropriate consult upon arrival. Dr. Davis, as Chief Medical Officer at St. Mary’s, ultimately made the decision to accept Ashley Perez, after her treating physician, Berto Lopez, went up the chain of command to the top (Dr. Davis) to secure her transfer for a surgical consultation. There is evidence that Dr. Davis was aware that general surgery and trauma surgery had already refused Ms. Perez’ transfer based upon contractual issues and issues regarding the general surgeon’s surgical privileges. Considering this knowledge, a jury could conclude that it was reckless for Dr. Davis to accept Ms. Perez without ensuring that she would be seen by a trauma surgeon. A jury could also conclude that because Dr. Davis failed to do so, Ashley Perez was not taken to surgery until many hours after her arrival at St. Mary’s when it was far too late to save her life.

22. St. Mary’s Transfer Center nursing notes reflect that Dr. Lopez went up the chain of command to Dr. Davis, the Chief Medical Officer of St. Mary’s, after he was advised by trauma and general surgery that they would not accept the transfer of Ms. Perez. The Transfer Center nursing notes further reflect that Dr. Davis agreed to accept Ms. Perez, and that upon arrival, she would be evaluated by trauma services. Specifically, the notes state:

.... Called Dr. Davis to advise same, conference call connected with Dr. Lopez to discuss further. Final plans as follows: Dr. Lopez to admit Pt. to SMMC and write

for critical care consult upon arrival. Dr. Lopez agrees with same. Once critical care consult written, trauma services will evaluate.

St Mary's Transfer In Form expressly states under reason for transfer: "trauma surgery."⁶

23. Defendants contend that Dr. Lopez has testified Dr. Davis never promised him that Ms. Perez would be seen by a surgeon upon her arrival, and therefore the very basis of Plaintiff's claim for punitive damages fails. While it is true that a jury may ultimately conclude from this testimony that punitive damages are inappropriate, the Court finds that Dr. Lopez's deposition testimony does not completely negate evidence in the medical record which clearly suggests that Dr. Davis agreed to Ashley's transfer, and also agreed that she would be seen by trauma services. Furthermore, Dr. Lopez's testimony establishes that he was left with the impression that Dr. Davis was going to provide his patient a surgeon "one way or the other," and this is why he did not reach out to other facilities for assistance. *See Lopez deposition at p.282-83.*

24. There is evidence from which a jury could determine that Dr. Davis never communicated his final plan, as referenced in Transfer Center nursing notes, to any surgeon at St. Mary's nor did he order any of the surgeons to see Ashley upon her arrival, leaving the only people with the necessary training and experience to save Ms. Perez completely in the dark. Dr. El-Haddad, the on-call trauma surgeon on the date in question, testified under oath that Dr. Davis's actions were reckless; that Dr. Davis had an obligation to make sure a surgeon was available when he accepted the transfer; that Dr. El-Haddad would have seen Ms. Perez had he been requested to do so by Dr. Davis; and that Dr. Davis's expectation that trauma surgeons would see Ashley Perez by writing a critical care consult note without notifying any surgeons of his plan was reckless. Plaintiff's proffer sets forth Dr. El-Haddad's testimony in detail, which for the sake of brevity will not be repeated herein.

⁶ The Transfer Center Nursing Notes and Transfer In Form were attached to Plaintiff's Proffer as Exhibits 2 and 3.

25. Finally, Plaintiff's hospital administration expert, Thomas Bojko, M.D., has also opined that Dr. Davis's conduct was reckless for the following reasons which, contrary to the Defendants' suggestion, are not at all conclusory:

- a) When William Jeffrey Davis, D.O. decided on April 21, 2014 to accept Ashley Perez in transfer on behalf of St. Mary's Medical Center, notwithstanding any contractual agreements in place at his hospital, Williams Jeffrey Davis, D.O., as CMO of St. Mary's Medical Center, determined that the hospital and its trauma service would treat Ashley Perez;
- b) Williams Jeffrey Davis, D.O. knew at the time of his acceptance of Ashley Perez in transfer from Wellington Regional Medical Center on the evening of April 21, 2014, that she was in dire need of – and being expressly transferred for – emergency life-saving surgery to stop an intra-abdominal hemorrhage;
- c) By St. Mary's Medical Center accepting Ashley Perez under these circumstances and with this expressed knowledge, William Jeffrey Davis, D.O., on behalf of St. Mary's Medical Center, accepted responsibility for the life, safety and well-being of this patient and had a non-delegable duty to enforce his decision that the trauma service see Ashley Perez upon her arrival by giving direct and clear orders to the trauma surgeons or the general surgeons on call;
- d) St. Mary's Medical Center, as a health care facility promoting itself to its community for its “top-level care” and specialists committed to saving lives, likewise had an institutional duty to have in place and follow clear procedural guidelines for the adequate and timely medical and surgical management of Ashley Perez, and did not;
- e) Notwithstanding any contractual agreements in place at the time, Ashley Perez, while at St. Mary's Medical Center, was bleeding internally and suffering from hemorrhagic shock, and Dr. El-Haddad, Dr. Hristov and the trauma service had the training, experience, and expertise to save Ashley Perez's life and should have timely evaluated her and managed her critical care needs as per the plan and instructions put in place by CMO, William Jeffrey Davis, D.O.;
- f) Per William Jeffrey Davis, D.O.'s recorded phone call and deposition testimony, William Jeffrey Davis, D.O. stated that providing critical care services was a role and function of the surgical critical care specialists on the Trauma Service at St. Mary's Medical Center, and as such, he had a non-delegable duty to make sure that the trauma surgeons understood their role, which they did not, and further had a non-delegable duty to follow up and give direct orders to treat this patient once St. Mary's Medical Center decided to admit her.

Plaintiff's hospital administration expert has also opined that "these violations together rise to the level of reckless disregard for the life and safety of Ashley Perez, and the conduct by these defendants demonstrated a conscious disregard or indifference to the life, safety and well-being of Ashley Perez."

26. Defendants argue that the Court should not consider Dr. Bojko's affidavit because his expert witness certificate issued under Fla. Statute § 458.3175 had expired at the time he signed his affidavit. This argument disregards the fact that Plaintiffs may establish a reasonable basis for punitive damages by proffer, which is "merely a representation of what evidence the [party] proposes to present and is not actual evidence." See Estate of Despain v. Avante Group, Inc., 900 So. 2d 637, 642 (Fla. 5th DCA 2005)(quoting Grim v. State, 841 So. 2d 455, 462 (Fla. 2003)). Thus, it is of no import that Dr. Bojko's affidavit may have been inadmissible based upon a failure to comply with 458.3175, it merely had to proffer the opinions which he intends to give at trial. Dr. Bojko has since obtained a current expert witness certificate and has executed another affidavit that is identical in form and substance to the affidavit previously filed in support of Plaintiff's Motion to Amend. Thus, the Court finds that the opinions he proffered in support of the Plaintiff's Motion are adequate for the Court to consider in determining the sufficiency of Plaintiff's proffer.

27. The Court also finds that Plaintiff's proffer and record evidence establish a reasonable basis for the recovery of punitive damages against St. Mary's pursuant to § 768.72(3)(b) because there is evidence that Dr. Davis was acting in his capacity as an officer of St. Mary's. Dr. Davis testified at his deposition that as the Chief Medical Officer he was involved with the interface with the staff physicians and attended all the peer review committees, all the utilization review committees as well as any high level administrative meeting. Most importantly, he also testified that 24 hours a day, seven days a week for nine years he was on call for the transfer

center and mediated any disputes at the transfer center. Plaintiff's proffer sets forth the relevant testimony verbatim.

Based on the foregoing, it is thereby

ORDERED AND ADJUDGED as follows:

A. Defendants' Motion for Reconsideration of this Court's Order Granting Plaintiff's Motion to Amend Amended Complaint to Add Punitive Damages Against William Jeffrey Davis, D.O. and St. Mary's Medical Center, Inc. d/b/a St. Mary's Medical Center is GRANTED solely as to the Court conducting a rehearing and reconsideration of its Order and DENIED in all other respects.

B. The Plaintiffs Motion for Leave to Amend the Complaint to add a claim for punitive damages is GRANTED.

C. The proposed Second Amended Complaint which was attached as an Exhibit to Plaintiff's Proffer is deemed filed as of the date of this Order and it is the operative complaint in this matter.⁷

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida this Tuesday, November 06, 2018.



HOWARD K. COATES, JR.
CIRCUIT JUDGE

Copies Furnished:
See Attached Service List

SERVICE LIST

⁷ The Court understands that there is a separate Motion to Strike a Third Amended Complaint which was apparently filed by Plaintiff's counsel inadvertently without leave of Court. The Court views this as a separate issue which can be addressed via a hearing on the pending Motion to Strike in the event the parties are unable to resolve the issue.

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